

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSHUA ADAM SCHULTE,

Defendant.

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17-CR-548 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

Defendant filed supplemental notices pursuant to Section 5 of the Classified Information Procedures Act (“CIPA”), 18. U.S.C. app. 3, on January 28, 2022 (“Third Notice”), and February 7, 2022 (“Fourth Notice”). Pursuant to these Notices, Defendants seeks to introduce, among other things, evidence that information in the “documents, writings, and notes” Defendant is charged with communicating and attempting to communicate in Counts 3 and 4 of the Third Superseding Indictment, *see* ECF No. 405, was publicly available at the time of the charged conduct. In its responsive filing, the Government argues that the evidence Defendant lists in his Notices is categorically inadmissible because the question of whether information is publicly available is irrelevant to the question of whether it is information “relating to the national defense,” pursuant to 18 U.S.C. § 793(e). For reasons that will be explained in a forthcoming opinion, the Court disagrees and concludes that evidence tending to show that the information in the “documents, writings, and notes” Defendant is charged with communicating and attempting to communicate in Counts 3 and 4 of the Third Superseding Indictment was publicly available at the time of the charged conduct is not categorically irrelevant or inadmissible.

That does not mean, however, that any of the classified information or documents

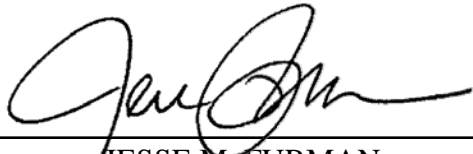
referenced in Defendant's Notices may be admitted, let alone in their existing form. It may well be that Defendant can make the argument he wishes to make without disclosing any classified information or documents. Or it may be that, to the extent Defendant does need to use classified information or documents, redactions or substitutions pursuant to CIPA Section 6(c) would be appropriate. The Court intimates no view on any of the foregoing. (Nor does the Court intimate a view in this Order on the other categories of evidence listed in Defendant's supplemental Third and Fourth CIPA Section 5 Notices.)

In light of the Court's bottom-line conclusion, the Government shall file any motion pursuant to CIPA Section 6(c) with respect to this category of evidence by **May 19, 2022**.

Defendant shall file any response by **May 26, 2022**.

SO ORDERED.

Dated: May 10, 2022
New York, New York



JESSE M. FURMAN
United States District Judge